Intan Shaharzad bt Mohd Azri & Anor v Kerajaan Malaysia & Ors

HIGH COURT (IPOH) — CIVIL SUIT NO AA-21NCVC-18–06 OF 2021
MOSES SUSAYAN J
29 JULY 2025

Tort — Negligence — Claim for damages — High-risk pregnancy — Employee informed supervisors of high-risk pregnancy and requested lighter duties — Whether employee tasked with physically demanding duties despite request for lighter duties — Whether request for lighter duties wrongfully denied — Whether timely medical care provided during plaintiff's emergency — Whether employee's miscarriage caused by defendants' actions or omissions — Whether plaintiff's mental distress a foreseeable result of defendants' conduct

Tort — Negligence — Vicarious liability — High-risk pregnancy — Employee informed supervisors of high-risk pregnancy and requested lighter duties — Whether employee tasked with physically demanding duties despite request for lighter duties — Whether defendants under statutory duty pursuant to Occupational Safety and Health Act 1994 ('the OSHA') and Guidelines to ensure a safe working environment for employee during pregnancy — Whether Government of Malaysia vicariously liable and liable in damages to plaintiff

This suit arose from the plaintiffs' allegation of negligence and breach of statutory duty by the defendants, which the plaintiffs claim led to the miscarriage of the first plaintiff, a healthcare assistant employed by the first defendant as a Healthcare Assistant at Hospital Teluk Intan. The claim primarily concerned the defendants' failure to accommodate the first plaintiff's request for light duty after knowledge of her early high-risk pregnancy, and the adverse consequences that followed. In early October 2018, the plaintiff confirmed her pregnancy and informed her supervisors of her pregnancy. She presented her antenatal record and requested lighter duties as advised by a government clinic doctor. However, no documented reproductive health risk assessment was conducted by Hospital Teluk Intan, in accordance with the Occupational Safety and Health Act 1994 and the Guidelines on Reproductive Health Policy & Programmes at the Workplace. Instead, the first plaintiff was tasked with physically demanding duties. During the course of her duties, the first plaintiff experienced vaginal bleeding. She reported the incident to her superior and was subsequently directed to attend the Klinik Kesihatan Ibu dan Anak ('KKIA'), approximately 4km away. She travelled there alone by motorcycle. Upon arrival at KKIA, the first plaintiff was examined and diagnosed with an incomplete miscarriage, a condition where parts of the

foetus remain in the uterus. During her time at the clinic, the plaintiff's ordeal intensified. She experienced the traumatic passage of foetal tissue, in which she witnessed the expulsion of the gestational sac or remains of the foetus into her sanitary pad. In a state of profound emotional distress and physical pain, and with no accompanying medical personnel, she had no choice but to document the expelled matter herself, she took a photograph of the tissue later to show the medical personnel at the hospital as proof. The psychological weight of witnessing her own miscarriage unfold, alone and unsupported, left lasting emotional scars on her. She was later rushed back to Hospital Teluk Intan, where she was admitted for further treatment. However, by then, critical time had been lost, and the miscarriage had progressed. The first plaintiff was later discharged with a follow-up psychiatric referral. She was diagnosed with moderate depression and received psychiatric care. The plaintiff argued that defendants' failure to conduct risk assessments, assign light duties, or activate emergency protocols triggered liability in tort. Hence, the present claim against the defendants. The issues that arose for determination were: (a) whether the defendants, as officers and employers of Hospital Teluk Intan, were under a statutory duty under the Occupational Safety and Health Act 1994 ('the OSHA') and Guidelines to ensure a safe working environment for the first plaintiff during her pregnancy; (b) whether the plaintiff properly requested lighter duties, and if the defendants wrongly denied it; (c) whether the defendants failed to provide timely medical care during plaintiff's emergency; (d) whether defendants' actions or omissions materially contributed to the plaintiff's miscarriage; (e) whether the plaintiff's mental distress was a foreseeable result of the defendants' conduct; and (f) whether the first defendant (the Government of Malaysia) was vicariously liable for the acts or omissions of the fourth to sixth defendants and liable in damages to the plaintiff.

Held, allowing the plaintiffs' claim:

(1) Expert witness Dr Milton Lum ('SP5'), a consultant obstetrician and gynaecologist, aligned with the hospital's own findings, revealed a failure to establish or enforce systems for occupational health protection. Failing to carry out a risk assessment following the plaintiff's pregnancy disclosure constituted a breach of the defendants' duties under ss 15 and 16 of the OSHA. Further, the defendants argued that the plaintiff bore the legal burden to prove breach and causation and that no statutory duty arose without formal documentation or medical certification. However, the plaintiff had met this burden. Her oral notice of pregnancy was clear and uncontroverted. Both expert and documentary evidence establish that the failure to conduct a risk assessment following this notice violated the hospital's legal obligations. The internal inquiry's acknowledgment of systemic weaknesses further confirmed this breach (see paras 29–31).

(2) SD1, Kamsani bin Kadir, the plaintiff's supervisor, who was the plaintiff's supervisor, admitted during cross-examination that he had knowledge of the plaintiff's pregnancy but failed to document or escalate any measures for workplace adjustments. Despite the known occupational guidelines, he also acknowledged the absence of any documented initiative to assess her condition or to modify her duties. This testimony gave implicit support to the plaintiff's claim of neglect, especially in failing to provide light duty or risk assessments after she disclosed her pregnancy admitted (see para 36).

(3) No formal occupational health system was in place to deal with pregnancy-related risks. This reflected systemic non-compliance with OSHA. The statutory duties under ss 15 and 16 of the OSHA and the relevant guidelines were breached. The failure of the defendants, particularly the fourth to sixth defendants, to take reasonable steps to assess and modify the plaintiff's duties after her pregnancy disclosure was not only negligent but also unlawful. Accordingly, this breach of statutory duty materially contributed to the plaintiff's miscarriage and the resulting emotional harm. The legal threshold of liability was met (see paras 41–43).

(4) The plaintiff did not produce a formal certificate but relied on oral medical advice conveyed from the KKIA. The defendants argue this did not meet procedural requirements. Nevertheless, the plaintiff's oral request, made directly to supervisory staff after medical advice, constituted a sufficient invocation of her need for accommodation under the circumstances. The insistence on written documentation as a precondition, without providing the means or guidance to obtain it, was unreasonably rigid and inconsistent with the principles of employee safety and proactive duty under s 15 of the OSHA. Accordingly, the plaintiff properly requested lighter duties and the defendants wrongfully denied or failed to act upon this request. This failure amounted to a breach of duty, particularly in the context of a foreseeable health risk to a pregnant employee working in a high-stress hospital setting (see paras 48 & 53–54).

(5) The plaintiff had informed her supervisor of her pregnancy and made an oral request for light duties. This triggered a legal and professional obligation to assess occupational risk, which was never fulfilled. The defendants' omission to perform an occupational risk assessment and their failure to modify the plaintiff's duties materially increased the risk of miscarriage. This lapse was causally linked to the injury and was neither trivial nor unforeseeable. Accordingly, the defendants' conduct materially contributed to the plaintiff's miscarriage and that the legal threshold for causation in tort law had been met (see paras 58 & 62–63).

(6) The plaintiff had shown through medical evidence that the miscarriage and subsequent mental health deterioration were not only foreseeable but expected risks that medically trained supervisors should have anticipated. As medical professionals, the defendants should have appreciated the gravity of denying lighter duties to a pregnant employee and the emotional toll a miscarriage could inflict. The plaintiff's psychological distress, manifested as clinically diagnosed depression, was a foreseeable and direct consequence of the defendants' omission in addressing the plaintiff's request for workplace accommodation. The plaintiff's emotional vulnerability was not a novel or rare occurrence in such circumstances but a likely sequela in a pregnant woman who suffers a miscarriage under preventable work conditions. Accordingly, the defendants liable for the plaintiff's mental distress (see paras 66, 68 & 70–71).

(7) The Government's liability under s 5 of the Government Proceedings Act 1956 ('the GPA') was absolute once it was shown that the tortfeasors acted within the scope of public duty. On the facts of the case, the defendants did not dispute that the fourth to sixth defendants were acting in their official capacity. Accordingly, the acts and omissions of the fourth to sixth defendants, being committed during the discharge of their duties as public officers, give rise to vicarious liability on the part of the first defendant under s 5 of the GPA. Hence, the first defendant was vicariously liable for the proven breaches, and the plaintiffs were entitled to compensation for the physical, emotional, and consequential losses suffered (see paras 79–81).

(8) The defendants argued that the miscarriage could have resulted from natural factors, including SP1's age and preexisting fibroid condition. However, once the defendants were informed of the plaintiff's pregnancy, there was a duty to take proactive steps consistent with the Guideline on Reproductive Health Policy and Programme at the Workplace. Their failure to do so materially increased the risk of harm. The plaintiff was, therefore, entitled to general damages on the basis that plaintiff's work conditions materially increased the risk of miscarriage, but a reduction from the sum claimed was warranted due to the lack of conclusive causation. Accordingly, a total sum of RM80,000 was awarded under general damages (see paras 87–89).

(9) There was no clear evidence of deliberate cruelty or oppressive behaviour that would justify a high aggravated award. However, the defendants, as healthcare professionals, failed to provide the necessary emotional support and institutional responsiveness expected in the aftermath of a miscarriage. While the conduct did not meet the legal threshold for malice, the court recognised that the insensitive handling of the situation

warranted some remedy. Accordingly, the court awarded RM20,000 in aggravated damages (see paras 93–94).

(10) The first plaintiff's loss of reproductive opportunity was a genuine consequence and IVF presented a reasonable remedial option. In light of competing medical factors and the partial causative link, the court awarded RM50,000 under the head of future damages (IVF costs). For the claim of legal costs and incidental expenses, the court, to maintain proportionality, awarded a global sum of RM40,000, including legal costs and disbursements (see paras 95–96).

[Bahasa Malaysia summary

Tindakan ini timbul daripada dakwaan plaintif-plaintif berhubung kecuaian dan pelanggaran kewajipan statutori oleh defendan-defendan, yang mana plaintif-plaintif mendakwa telah mengakibatkan keguguran yang dialami oleh plaintif pertama, seorang pembantu kesihatan yang bekerja dengan defendan pertama sebagai Pembantu Kesihatan di Hospital Teluk Intan. Tuntutan ini pada asasnya berkait dengan kegagalan defendan-defendan untuk menyediakan tugasan ringan kepada plaintif pertama selepas pengetahuan mengenai kehamilan awal berisiko tinggi beliau, serta akibat-akibat mudarat yang berlaku selepas itu. Pada awal Oktober 2018, plaintif mengesahkan kehamilan beliau dan memaklumkan pegawai penyelianya tentang perkara tersebut. Beliau mengemukakan rekod antenatalnya dan memohon tugasan yang lebih ringan sebagaimana dinasihatkan oleh doktor klinik kerajaan. Walau bagaimanapun, tiada penilaian risiko kesihatan reproduktif secara bertulis dijalankan oleh Hospital Teluk Intan selaras dengan Akta Keselamatan dan Kesihatan Pekerjaan 1994 serta Garis Panduan Dasar dan Program Kesihatan Reproduktif di Tempat Kerja. Sebaliknya, plaintif pertama ditugaskan dengan kerja-kerja yang memerlukan tenaga fizikal. Semasa melaksanakan tugasnya, plaintif pertama mengalami pendarahan faraj. Beliau memaklumkan kejadian tersebut kepada pegawai atasan dan kemudiannya diarahkan untuk menghadiri Klinik Kesihatan Ibu dan Anak ('KKIA'), kira-kira 4km dari tempat kerja. Beliau pergi ke sana seorang diri dengan menaiki motosikal. Setibanya di KKIA, plaintif pertama diperiksa dan didiagnos mengalami keguguran tidak lengkap, iaitu keadaan di mana sebahagian tisu janin masih berada di dalam rahim. Semasa berada di klinik, penderitaan plaintif semakin memuncak. Beliau mengalami detik traumatik apabila tisu janin keluar, di mana beliau menyaksikan sendiri pengeluaran kantung kehamilan atau sisa janin ke dalam tuala wanita. Dalam keadaan tekanan emosi yang amat mendalam serta kesakitan fizikal, dan tanpa sebarang pengiring perubatan, beliau tiada pilihan selain mendokumentasikan sendiri tisu yang keluar tersebut; beliau mengambil gambar tisu tersebut untuk ditunjukkan kemudian kepada pegawai perubatan di hospital sebagai bukti. Beban psikologi menyaksikan sendiri proses keguguran tersebut, bersendirian dan tanpa sokongan, telah meninggalkan kesan emosi yang mendalam

kepadanya. Beliau kemudiannya dihantar semula ke Hospital Teluk Intan dan dimasukkan untuk rawatan lanjut. Namun pada ketika itu, masa kritikal telah berlalu dan proses keguguran telahpun berlaku. Plaintif pertama kemudiannya discaj dengan rujukan psikiatri susulan. Beliau didiagnos mengalami kemurungan sederhana dan menerima rawatan psikiatri. Plaintif berhujah bahawa kegagalan defendan-defendan untuk menjalankan penilaian risiko, menyediakan tugasan ringan atau mengaktifkan protokol kecemasan telah menimbulkan liabiliti dalam tort. Oleh itu, tuntutan semasa terhadap defendan-defendan. Isu-isu yang timbul untuk diputuskan adalah: (a) sama ada defendan-defendan, sebagai pegawai dan majikan Hospital Teluk Intan, berada di bawah kewajipan statutori di bawah Akta Keselamatan dan Kesihatan Pekerjaan 1994 ('AKKP') dan Garis Panduan untuk memastikan persekitaran kerja yang selamat kepada plaintif pertama semasa kehamilannya; (b) sama ada plaintif telah membuat permohonan tugasan ringan dengan sewajarnya dan sama ada defendan-defendan telah menolak permohonan tersebut secara salah; (c) sama ada defendan-defendan telah gagal menyediakan rawatan perubatan segera semasa kecemasan plaintif; (d) sama ada tindakan atau peninggalan defendan-defendan telah menyumbang secara material kepada keguguran plaintif; (e) sama ada tekanan mental plaintif merupakan akibat yang boleh dijangka daripada perlakuan defendan-defendan; dan (f) sama ada defendan pertama (Kerajaan Malaysia) bertanggungjawab secara vikarius atas perbuatan atau peninggalan defendan keempat hingga keenam serta bertanggungan dalam gantirugi terhadap plaintif.

Diputuskan, membenarkan tuntutan plaintif-plaintif:

(1) Saksi pakar Dr Milton Lum ('SP5'), seorang pakar perbidanan dan sakit puan, selaras dengan dapatan hospital sendiri, menunjukkan kegagalan untuk mewujudkan atau menguatkuasakan sistem perlindungan kesihatan pekerjaan. Kegagalan menjalankan penilaian risiko selepas pendedahan kehamilan plaintif merupakan pelanggaran kewajipan defendan-defendan di bawah ss 15 dan 16 AKKP. Defendan-defendan berhujah bahawa plaintif menanggung beban undang-undang untuk membuktikan pelanggaran dan hubungan, dan bahawa tiada kewajipan statutori wujud tanpa dokumentasi atau sijil perubatan formal. Walau bagaimanapun, plaintif telah memenuhi beban tersebut. Notis lisan mengenai kehamilannya adalah jelas dan tidak dipertikaikan. Keterangan pakar dan dokumentari membuktikan bahawa kegagalan menjalankan penilaian risiko selepas notis tersebut melanggar kewajipan undang-undang hospital. Pengakuan siasatan dalaman mengenai kelemahan sistemik turut mengesahkan pelanggaran ini (rujuk perenggan 29–31).

(2) SD1, Kamsani bin Kadir, penyelia plaintif, mengakui semasa pemeriksaan balas bahawa beliau mempunyai pengetahuan mengenai kehamilan plaintif tetapi gagal mendokumenkan atau mengemukakan

sebarang langkah penyesuaian kerja. Walaupun mengetahui garis panduan pekerjaan yang berkaitan, beliau turut mengakui ketiadaan apa-apa inisiatif bertulis untuk menilai keadaan plaintif atau mengubahsuai tugasan beliau. Keterangan ini menyokong tuntutan plaintif mengenai pengabaian, khususnya kegagalan menyediakan tugasan ringan atau penilaian risiko selepas beliau mendedahkan kehamilannya (rujuk perenggan 36).

(3) Tiada sistem kesihatan pekerjaan formal diwujudkan untuk menangani risiko berkaitan kehamilan. Ini mencerminkan ketidakpatuhan sistemik terhadap AKKP. Kewajipan statutori di bawah ss 15 dan 16 AKKP serta garis panduan berkaitan telah dilanggar. Kegagalan defendan-defendan, terutamanya defendan keempat hingga keenam, untuk mengambil langkah munasabah bagi menilai dan mengubahsuai tugasan plaintif selepas pendedahan kehamilan beliau bukan sahaja cuai tetapi juga menyalahi undang-undang. Pelanggaran ini telah menyumbang secara material kepada keguguran plaintif dan kecederaan emosi yang dialami. Ambang liabiliti undang-undang telah dipenuhi (rujuk perenggan 41–43).

(4) Plaintif tidak mengemukakan sijil formal tetapi bergantung pada nasihat perubatan lisan daripada KKIA. Defendan-defendan berhujah bahawa perkara tersebut tidak memenuhi keperluan prosedur. Namun, permintaan lisan plaintif yang dibuat terus kepada pihak penyelia selepas menerima nasihat perubatan merupakan permintaan yang mencukupi bagi keadaan tersebut. Kebergantungan defendan-defendan kepada dokumentasi bertulis sebagai prasyarat, tanpa menyediakan panduan atau kemudahan untuk memperolehnya, adalah tidak munasabah dan bercanggah dengan prinsip keselamatan pekerja serta kewajipan proaktif di bawah s 15 AKKP. Oleh itu, plaintif telah membuat permintaan tugasan ringan dengan sewajarnya dan defendan-defendan telah menolak atau gagal bertindak atas permintaan tersebut secara salah. Kegagalan ini merupakan pelanggaran kewajipan, terutamanya dalam konteks risiko kesihatan yang boleh dijangka kepada pekerja hamil yang bekerja di persekitaran hospital tekanan tinggi (rujuk perenggan 48 & 53–54).

(5) Plaintif memaklumkan penyelianya mengenai kehamilan dan membuat permohonan lisan untuk tugasan ringan. Ini memicu kewajipan undang-undang dan profesional untuk menjalankan penilaian risiko pekerjaan, yang tidak pernah dilaksanakan. Kegagalan defendan-defendan menjalankan penilaian risiko pekerjaan dan kegagalan mengubahsuai tugasan plaintif telah meningkatkan risiko keguguran secara material. Kecuaian tersebut mempunyai hubungan kausal dengan kecederaan dan bukanlah remeh atau di luar jangkaan. Oleh itu, tindakan defendan-defendan menyumbang secara material

kepada keguguran plaintif dan ambang undang-undang bagi hubungan kausal telah dipenuhi (rujuk perenggan 58 & 62–63).

(6) Plaintif membuktikan melalui keterangan perubatan bahawa keguguran dan kemerosotan kesihatan mentalnya adalah risiko yang boleh dijangka dan patut disedari oleh pegawai penyelia terlatih perubatan. Sebagai profesional perubatan, defendan-defendan sepatutnya memahami implikasi serius menolak tugasan ringan kepada pekerja hamil serta beban emosi akibat keguguran. Tekanan psikologi plaintif, yang disahkan sebagai kemurungan klinikal, adalah akibat yang boleh dijangka daripada peninggalan defendan-defendan menangani permintaan plaintif bagi penyesuaian tempat kerja. Kelemahan emosi plaintif bukanlah keadaan luar biasa tetapi kesan yang lazim bagi wanita hamil yang mengalami keguguran di bawah keadaan kerja yang boleh dielakkan. Oleh itu, defendan-defendan bertanggungan atas tekanan mental plaintif (rujuk perenggan 66, 68 & 70–71).

(7) Liabiliti Kerajaan di bawah s 5 Akta Prosiding Kerajaan 1956 ('APK') adalah mutlak apabila dibuktikan bahawa tortfeasor bertindak dalam lingkungan tugas awam. Berdasarkan fakta, defendan-defendan tidak menafikan bahawa defendan keempat hingga keenam bertindak dalam kapasiti rasmi. Oleh itu, perbuatan dan peninggalan defendan-defendan tersebut ketika melaksanakan tugas awam menimbulkan liabiliti vikarius kepada defendan pertama di bawah s 5 APK. Justeru, defendan pertama bertanggungan secara vikarius atas pelanggaran yang dibuktikan, dan plaintif-plaintif berhak mendapat pampasan atas kerugian fizikal, emosi dan akibat-akibat susulan yang dialami (rujuk perenggan 79–81).

(8) Defendan-defendan berhujah bahawa keguguran mungkin berlaku akibat faktor semula jadi, termasuk umur SP1 dan keadaan fibroid sedia ada. Walau bagaimanapun, setelah defendan-defendan dimaklumkan mengenai kehamilan plaintif, mereka mempunyai kewajipan untuk mengambil langkah proaktif selaras dengan Garis Panduan Dasar dan Program Kesihatan Reproduktif di Tempat Kerja. Kegagalan berbuat demikian telah meningkatkan risiko kemudaratan secara material. Plaintif berhak kepada gantirugi am atas asas bahawa keadaan kerja beliau telah meningkatkan risiko keguguran, namun pengurangan jumlah tuntutan adalah wajar kerana ketiadaan bukti kausaliti yang konklusif. Maka, jumlah RM80,000 dianugerahkan sebagai gantirugi am (rujuk perenggan 87–89).

(9) Tiada keterangan jelas mengenai kekejaman atau tingkah laku menindas yang boleh mewajarkan anugerah pampasan teruk yang tinggi. Walau bagaimanapun, defendan-defendan sebagai profesional kesihatan gagal menyediakan sokongan emosi dan respons institusi yang sewajarnya selepas keguguran. Walaupun perlakuan tersebut tidak memenuhi ambang undang-undang bagi unsur niat jahat, mahkamah mengiktiraf

bahawa pengendalian yang tidak sensitif wajar diberi remedi. Maka, mahkamah menganugerahkan RM20,000 sebagai gantirugi teruk (rujuk perenggan 93–94).

(10) Kehilangan peluang reproduktif plaintif pertama merupakan kesan sebenar dan rawatan IVF merupakan pilihan remedi yang munasabah. Memandangkan faktor perubatan yang bersaing dan kaitan kausal separa, mahkamah menganugerahkan RM50,000 di bawah garis gantirugi masa hadapan (kos IVF). Bagi tuntutan kos guaman dan perbelanjaan insidental, mahkamah, demi mengekalkan kesepadanan, menganugerahkan jumlah global RM40,000 termasuk kos guaman dan perbelanjaan (rujuk perenggan 95–96).]

Cases referred to

Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal [2018] 3 MLJ 281; [2018] 1 AMR 209; [2018] 3 CLJ 427, FC (refd)

Fairchild v Glenhaven Funeral Services Ltd and others; Fox v Spousal (Midlands) Ltd; Matthews v Associated Portland Cement Manufacturers (1978) Ltd and others [2002] UKHL 22, HL (refd)

McGhee v National Coal Board [1973] 1 WLR 1, HL (refd)

Nares a/l Sundaram & Anor v Goh May Fat & Anor (Appeal No B-04–300–09) of 2014 (unreported) (refd)

Ogedegbe Imoukhuede Rawlings v Lingeswaran a/l Muniandy [2016] 10 MLJ 222; [2016] CLJU 292, HC (refd)

Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal [2018] 1 MLJ 784; [2018] 4 AMR 745; [2017] CLJU 500, CA (refd)

Smith v Leech Brain & Co Ltd and another [1962] 2 QB 405, QBD (folld)

Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound [1961] AC 388, PC (folld)

Wong Thin Yit v Mohamed Ali [1971] 2 MLJ 175; [1971] CLJU 151, FC (refd)

Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor [2011] 2 MLJ 1; [2011] 1 CLJ 409, FC (folld)

Legislation referred to

Government Proceedings Act 1956 ss 5, 6
Occupational Safety and Health Act 1994 ss 15, 15(1), (2), 16

PA Sharon (Palani, Ammal & Co) for the plaintiffs.
Norazlinawati Mohd Arshad (with Siti Hanida Abd Kadir) (Federal Counsel, Perak State Legal Advisor's Office) for the defendants.

Moses Susayan J:

INTRODUCTION

[1] This suit arises from the plaintiffs' allegation of negligence and breach of statutory duty by the defendants, which the plaintiffs claim led to the miscarriage of the first plaintiff, a healthcare assistant employed by the first defendant at Hospital Teluk Intan. The claim primarily concerns the defendants' failure to accommodate the first plaintiff's request for light duty after knowledge of her early high-risk pregnancy, and the adverse consequences that followed.

BACKGROUND FACTS BY THE PLAINTIFF

[2] The first plaintiff, Intan Shaharzad bt Mohd Azri, was employed as a healthcare assistant (*pembantu perawatan kesihatan*) at Hospital Teluk Intan. In early October 2018, she confirmed her pregnancy and informed her supervisors, including the fifth and sixth defendants. She presented her antenatal record and requested lighter duties as advised by a government clinic doctor.

[3] At the material time, no documented reproductive health risk assessment was conducted by Hospital Teluk Intan, in accordance with the Occupational Safety and Health Act 1994 and the Guidelines on Reproductive Health Policy and Programmes at the Workplace. Instead, the first plaintiff was tasked with physically demanding duties as a hospital runner, transporting medical items, documents, and patients between multiple hospital departments, carrying documents, medical items, and other duties involving walking and lifting. She was placed on the runner schedule from 22–26 October 2018. On 24 October 2018, her designated runner partner was absent, and she performed the runner duties alone.

[4] During the course of her duties on 24 October 2018, the first plaintiff experienced vaginal bleeding. She reported the incident to her superior and was subsequently directed to attend the Klinik Kesihatan Ibu dan Anak ('KKIA'), approximately 4km away. She travelled there alone by motorcycle.

[5] Upon arrival at KKIA, the first plaintiff was examined and diagnosed with an incomplete miscarriage, a condition where parts of the foetus remain in the uterus. During her time at the clinic, the plaintiff's ordeal intensified in that moment. The first plaintiff experienced the traumatic passage of foetal tissue, she witnessed the expulsion of what she believed to be the gestational sac or remains of the foetus into her sanitary pad. In a state of profound emotional distress and physical pain, and with no accompanying medical personnel, she

had no choice but to document the expelled matter herself, she took a photograph of the tissue later to show the medical personnel at the hospital as proof. The psychological weight of witnessing her own miscarriage unfold, alone and unsupported, left lasting emotional scars on her. She was later rushed back to Hospital Teluk Intan via ambulance, where she was admitted for further treatment. However, by then, critical time had been lost. The miscarriage had progressed.

[6] The first plaintiff was later discharged with a follow-up psychiatric referral. She was diagnosed with moderate depression and received psychiatric care beginning in November 2018.

[7] An internal inquiry was convened by the hospital. The inquiry found that no specific policy or formal system existed for workplace during pregnancy and that communication between departmental supervisors and staff was inadequate. It further noted the absence of a risk assessment process and commented on managerial decision-making regarding the first plaintiff's treatment pathway.

[8] The plaintiffs claim that these breaches, both statutory and under common law, directly caused or materially contributed to her miscarriage. They argue that had the first plaintiff been reassigned to lighter duties and provided prompt medical care when the bleeding started, the tragic outcome could have been averted. They further contend that the defendants' inaction reflects not only negligence but an institutional failure to protect the reproductive health of female staff

WITNESSES

The plaintiff witnesses

SP1 — Intan Shaharzad bt Mohd Azri

[9] SP1, Intan Shaharzad bt Mohd Azri, gave consistent and firm testimony under lengthy and rigorous cross-examination. She maintained throughout that her miscarriage was cause of work-related stress and physical overexertion resulting from the defendants' failure to accommodate her pregnancy with appropriate duty modifications. While she candidly admitted to occasional memory lapses, particularly concerning dates and procedural formalities, she steadfastly rejected any suggestion that her complaints were fabricated or exaggerated after the event. Her evidence was coherent, emotionally sincere, and aligned with medical records and corroborating witnesses' testimony.

SP2 — Dr See Kok Wah

[10] SP2, Dr See Kok Wah, provided consistent testimony during cross-examination. He stood by his medical findings that the plaintiff exhibited signs of an impending miscarriage when examined and confirmed that she had communicated workplace-related strain to him. Although he acknowledged that he did not independently verify the plaintiff's actual job scope or the working conditions at the hospital, he affirmed that her complaints were medically plausible and reasonable based on his clinical assessment. His evidence supported the view that the plaintiff's physical and emotional symptoms were consistent with the risk of miscarriage.

SP3 — Ashirah bt Abdul Rahman

[11] SP3, Ashirah bt Abdul Rahman, corroborated the plaintiff's account of being subject to a high workload and confirmed that the plaintiff had verbally requested light duty during her pregnancy. Under cross-examination, she acknowledged that no formal complaint was lodged, nor was any follow-up action taken to escalate the plaintiff's concerns to higher authorities. She denied any bias or intent to fabricate her testimony but fairly conceded that her knowledge was confined to her own working hours and that she could not speak of the plaintiff's complete schedule or treatment outside those periods.

SP4 — Dr Ahmad Syukri Chew bin Abdullah @ Chew Yee Yit

[12] SP4, Dr Ahmad Syukri Chew bin Abdullah, testified that the plaintiff exhibited clear signs of psychological trauma and emotional distress following her miscarriage. During cross-examination, he was questioned about the plaintiff's missed follow-up psychiatric appointments, but he maintained that his initial diagnosis of trauma was clinically appropriate and based on her presentation during consultation. His evidence remained consistent, and no indication of exaggeration or bias was elicited during the cross-examination. His testimony supported the plaintiff's claim of ongoing mental health impact post-incident.

SP5 — Dr Milton Lum Siew Wah (expert witness)

[13] SP5, Dr Milton Lum Siew Wah is an Obstetrics and Gynaecologist, who is called as an expert witness, he acknowledged during cross-examination that he did not personally examine the plaintiff. His expert opinion was derived solely from reviewing medical records, documents, and relevant Ministry of Health guidelines. He candidly accepted the limitations of his role but maintained that the hospital had breached its duties under the Occupational Safety and Health Act ('the OSHA'). He stood firm in his conclusion that the

failure to assign the plaintiff to light duty materially increased the risk of miscarriage, consistent with accepted occupational health standards.

SP6 — Ahmad Azib bin Ahmad (husband)

[14] SP6, Ahmad Azib bin Ahmad, the plaintiff's husband, who is the second plaintiff, testified to the emotional toll the miscarriage had on him, including the grief of lost fatherhood and the efforts he made to support his wife during and after the incident. During cross-examination, he was questioned about his involvement in preparing the plaintiff's pleadings and whether this had influenced or shaped her testimony. He firmly denied any orchestration or embellishment of the facts, maintaining that their claims were genuine. His testimony was delivered with sincerity and was consistent with the broader narrative presented by the plaintiff.

SP7 — Rosmawati (confinement therapist)

[15] SP7, Rosmawati, a confinement therapist, gave brief but credible evidence regarding the traditional care she provided to the plaintiff following the miscarriage. She confirmed that the plaintiff was physically weak and emotionally affected during the confinement period. Her observations supported the plaintiff's account of post-miscarriage recovery. Rosmawati's testimony was not heavily challenged during cross-examination and went largely uncontroverted, lending further credibility to the plaintiff's claim of physical and emotional hardship.

SP8 — Dr Sarah Abdul Mubarak (O&G Specialist)

[16] SP8, Dr Sarah Abdul Mubarak, an obstetrics and gynaecology specialist, provided her expert opinion via Zoom, focusing on pregnancy-related risks and applicable standards of care. She testified on the importance of workplace adjustments for pregnant employees and the need for early risk assessments. During cross-examination, her findings remained intact and were not materially challenged. She consistently upheld the prevailing medical standards for managing risk in early pregnancy and reinforced the view that appropriate interventions could have mitigated the plaintiff's miscarriage risk. Her evidence supported the need for proactive care in similar workplace contexts.

The defendant witnesses

SD1 — Kamsani bin Kadir (supervisor, fifth defendant)

[17] SD1, Kamsani bin Kadir, the fifth defendant and plaintiff's immediate supervisor, denied receiving any formal or informal request from the plaintiff for light duty during her pregnancy. Under cross-examination, he appeared defensive and sometimes evasive when questioned about the standard procedures for managing pregnant staff within the hospital. Notably, he could not produce any documentation demonstrating that the plaintiff's pregnancy was acknowledged or that any proactive steps were taken to assess or accommodate her condition. His testimony revealed a lack of institutional follow-through despite awareness of her pregnancy.

SD2 — Ahmad Hailme bin Abdul Halim (roster officer, sixth defendant)

[18] SD2, Ahmad Hailme bin Abdul Halim, the sixth defendant and officer responsible for duty rosters, denied that the plaintiff's assigned duties were unsafe or excessive during her pregnancy. However, he admitted under cross-examination that no occupational risk assessment was conducted despite being aware of her condition. He was challenged as to why no corrective action or response had been taken even after concerns and complaints had been raised. His testimony reflected a lack of procedural safeguards and a failure to implement protective measures for a pregnant staff member.

SD3 — Dr Khairul Baharin bin Mohd Baharuddin (third defendant, hospital admin)

[19] SD3, Dr Khairul Baharin bin Mohd Baharuddin, the third defendant and hospital administrator, defended the internal inquiry findings concluding that no wrongdoing had occurred. However, under cross-examination, he admitted that the inquiry process relied heavily on documentation and did not involve comprehensive interviews with relevant staff, including the plaintiff. When pressed further, he conceded that the Ministry of Health Guidelines, particularly those concerning reproductive health in the workplace, were not strictly adhered to in the hospital's handling of the plaintiff's case. His testimony revealed procedural deficiencies in the hospital's internal review mechanism.

SD4 — Dr Sazali bin Satari

[20] SD4, Dr Sazali bin Satari, gave technical testimony concerning staffing practices and standard operating procedures within the hospital. His evidence was largely formal and procedural, outlining the general framework rather than addressing the plaintiff's specific circumstances. Cross-examination was limited, and his testimony did not substantially challenge or contradict the

plaintiff's version of events. He maintained a neutral stance and did not offer opinions that undermined the core of the plaintiff's claims.

SD5 — Dr Mohammad Fahmi bin Zulkifli

[21] SD5, Dr Mohammad Fahmi bin Zulkifli, testified in support of the hospital's administrative procedures, asserting that internal actions were in compliance with institutional protocols. Under cross-examination, he was questioned on the hospital's adherence to Ministry Guidelines relating to workplace safety for pregnant employees. While he defended the hospital's conduct and maintained that it had acted reasonably based on the available information, he did not make any significant concessions. His testimony aimed to reinforce the view that there was no deliberate neglect or breach on the part of the hospital.

ISSUES FOR DETERMINATION

(a) whether the defendants owed and breached common law duty and statutory duties under OSHA 1994 and guidelines;

(b) whether the plaintiff properly requested lighter duties, and if the defendants wrongly denied it;

(c) whether the defendants failed to provide timely medical care during plaintiff's emergency;

(d) whether defendants' actions or omissions materially contributed to the plaintiff's miscarriage;

(e) whether the plaintiff's mental distress was a foreseeable result of the defendants' conduct; and

(f) whether the first defendant is vicariously liable and the plaintiffs are entitled to compensation.

Issue: Whether the defendants owed and breached statutory duties under the Occupational Safety and Health Act 1994 ('the OSHA') and Guidelines

[22] Before this court, the core issue was whether the defendants, as officers and employers of Hospital Teluk Intan, were under a statutory duty to ensure a safe working environment for the first plaintiff during her pregnancy, and whether that duty was breached.

[23] The plaintiff relies on s 15(1) and (2) of the Occupational Safety and Health Act 1994. Section 15(1) imposes a general duty on every employer to ensure, so far as practicable, the safety, health, and welfare of all employees. Section 15(2) extends that duty to include providing necessary information, instruction, training, and supervision. This obligation is reinforced by the

Guidelines on Reproductive Health Policy and Programmes at the Workplace issued by the Department of Occupational Safety and Health, which state:

> It should be the duty of employers to assess any risk to the reproductive health of employees and any possible effect on the pregnant employees ...

[24] Expert witness Dr Milton Lum ('SP5'), a consultant Obstetrician and Gynaecologist, testified unequivocally:

> In a hospital or clinic setting whenever a pregnant member of the staff informs us that she is pregnant, it is incumbent upon the attending doctor to, ... particularly if he is the head of department, to make a risk assessment of the patient's pregnancy, irrespective of the fact whether she's a patient or a member of the staff
>
> ...
>
> *... it is our usual practice to do that.*
>
> (NOE — p 6/76)

[25] He confirmed that no such assessment was conducted in this case, despite the plaintiff having notified her superiors of her pregnancy on 5 October 2018.

[26] The hospital's internal inquiry corroborated Dr Razali's ('SD4') opinion and recorded systemic deficiencies in workplace management, stating:

> The policy of work modification in pregnancy is vague, not only at departmental level, but for the whole hospital. putting the responsibility solely on managerial discretion without clear guidelines is unfair.
>
> (NOE p 41/68)

[27] When cross-examined on whether a formal written application for lighter duties was necessary, Dr Lum rejected that view:

> We do not ask the staff member to fill in an application form for light duty.
>
> (NOE p 41/76)
>
> That is very bureaucratic measure which cannot stand in practice simply because events may move very fast.
>
> (NOE p 46/76)

[28] He reiterated that a risk assessment should be automatic upon notice of pregnancy:

> Every pregnant woman has to be assessed on her individual risk.
>
> ...
>
> That is a standard practice.
>
> (NOE p 33/76)

[29] This expert testimony, aligned with the hospital's own findings, reveals a failure to establish or enforce systems for occupational health protection. The court is satisfied that failing to carry out a risk assessment following the plaintiff's pregnancy disclosure constitutes a breach of the defendants' duties under ss 15 and 16 of the OSHA.

[30] In reply, the defendants argued that the plaintiff bore the legal burden to prove breach and causation and that no statutory duty arose without formal documentation or medical certification. In support, they cited *Wong Thin Yit v Mohamed Ali* [1971] 2 MLJ 175; [1971] CLJU 151 to state that negligence must be proven on a balance of probabilities.

[31] The court finds that the plaintiff has met this burden. Her oral notice of pregnancy was clear and uncontroverted. Both expert and documentary evidence establish that the failure to conduct a risk assessment following this notice violated the hospital's legal obligations. The internal inquiry's acknowledgment of systemic weaknesses further confirms this breach.

[32] Additionally, the testimony of SP3, Ashirah bt Abdul Rahman, a *jururawat masyarakat* at Klinik Kesihatan Teluk Intan, provides material corroboration. She testified that the plaintiff arrived at the clinic in an emotionally and physically distressed state, and not via formal hospital referral:

> Patient, dia risau. Dia ada tanya Dr See macam mana keadaan ... keputusan scan itulah. Lepas tu, Dr See ada terangkanlah yang dia punya kandungan tu berisiko ... Jadi, bila Dr See spoken dengan hospital, pelan untuk referlah. Jadi, saya yang hantar guna ambulans.
>
> (NOE p 38/69)

[33] SP3 further testified that the plaintiff questioned why she had not been directed to the hospital's emergency unit despite her workplace proximity:

> Waktu tu saya sembang dengan dia ... cakap kita mungkin kena refer ke hospital. Jadi kenapa Puan tak terus pergi ke hospital sedangkan Puan bekerja di Pesakit Luar? Sebab kedudukan pesakit luar dengan kecemasan tu berhampiran. Jadi dia bagi tahu yang pihak atasan minta dia datang ke Klinik Kesihatan Teluk Intan untuk dapatkan rawatan.
>
> (NOE p 41/69)

[34] On the plaintiff's psychological condition, SP3 observed:

> Okay, waktu tu, dia memang nampak sedih, emosi dia macam terganggu. Dia nampak risau, dan dia tanya saya, sebelumnya dia tanya pada Dr See, tapi masih lagi tanya saya dalam ambulans sama ada dia punya kandungan selamat ataupun tidak.

[35] SP3's testimony confirms two institutional failures: first, that the plaintiff was wrongly diverted away from emergency care despite clear symptoms; and second, that no internal system existed to manage medical risk for pregnant staff. These failures are directly attributable to a breach of statutory duties.

[36] The court further notes that even the defendants' own witnesses support this finding. SD1, Kamsani bin Kadir, the plaintiff's supervisor, who was the plaintiff's supervisor, admitted during cross-examination that he had knowledge of the plaintiff's pregnancy but failed to document or escalate any measures for workplace adjustments. Despite the known occupational guidelines, he also acknowledged the absence of any documented initiative to assess her condition or to modify her duties. This testimony lends implicit support to the plaintiff's claim of neglect, especially in failing to provide light duty or risk assessments after she disclosed her pregnancy admitted.

[37] SD2, Ahmad Hailm bin Abdul Halim, also testified not having a roster for the month of October 2018:

> PA: Dan di hadapan Mahkamah, saya sudah teliti, Encik Hailme boleh sahkan, tidak ada roster untuk bulan Oktober 2018, setuju?
>
> SD2: Setuju.
>
> (NOE p 5/62)

[38] He admitted to telling the plaintiff:

> PA: Saya tak masuk hal kamu. Saya tak cakap pun bagi kamu cuti. Kamu jawab sendiri dengan bos. Baik?
>
> SD2: Ya, ya.
>
> (NOE p 29/61)

[39] SD3, Dr Khairul Baharin bin Mohd Baharuddin, the Hospital Director, distanced himself from direct operational oversight by explaining that Hospital Teluk Intan comprises over 50 departments, each headed by its own departmental director and supervised independently.

[40] SD4, Dr Sazali bin Satari, who chaired the internal inquiry, acknowledged that the inquiry findings relied predominantly on documentary evidence and lacked a thorough fact-finding process involving interviews or direct testimony from relevant personnel. This procedural gap limited the ability to confirm whether the plaintiff's complaints were formally lodged or investigated adequately. Moreover, Dr Sazali admitted that the inquiry did not comprehensively assess the hospital's compliance with Ministry guidelines on

workplace protections for pregnant employees, particularly regarding risk assessments or light duty arrangements.

[41] These testimonies confirm that no formal occupational health system was in place to deal with pregnancy-related risks, that duty assignments were informal and unrecorded, and that managers failed to respond to a known medical situation. This reflects systemic non-compliance with the OSHA 1994.

[42] Taken as a whole, the court finds that the statutory duties under ss 15 and 16 of the Occupational Safety and Health Act 1994 and the relevant guidelines were breached. The failure of the defendants, particularly the fourth to sixth defendants, to take reasonable steps to assess and modify the plaintiff's duties after her pregnancy disclosure was not only negligent but also unlawful.

[43] Accordingly, the court concludes that this breach of statutory duty materially contributed to the plaintiff's miscarriage and the resulting emotional harm. The legal threshold of liability is met.

Issue: Whether the plaintiff properly requested lighter duties and whether the defendants wrongly denied it

[44] The court must consider whether the first plaintiff had sufficiently conveyed her request for lighter duties and whether the defendants wrongfully rejected or failed to accommodate such a request. This issue concerns the interaction between internal occupational policy, supervisory discretion, and medical vulnerability in pregnancy.

[45] The plaintiff's position is that she had orally informed both her immediate supervisor, En Kamsani ('SD1'), and the roster supervisor, En Ahmad Hailme ('SD2'), of her need for lighter duties after receiving medical advice. She testified that she conveyed this to SD1 on 23 October 2018 and that SD2 had been messaged earlier via WhatsApp, which showed a blue tick but no reply. Her account is corroborated by her personal chronology and the transcript of the internal inquiry.

[46] In cross-examination, SD1 acknowledged this interaction:

> Pada 23.10, dia ada berjumpa saya di bilik, maklumkan dia mohon kerja light duty. Jadi saya maklumkan pada dia, kerja light duty tidak boleh diminta secara verbal macam itu sahaja. Mesti dapatkan surat pengesahan daripada pegawai perubatan yang merawat beliau. Sebab pegawai perubatan yang merawat beliau, arif, adakah dia perlu dibagi kerja light duty.
>
> (NOE p 54/60)

[47] However, SD1 also admitted there was no requirement for a formal letter from the supervisor to initiate such a request:

> Dia tak memerlukan surat. Cuma arahan sahaja supaya mana-mana pekerja yang memerlukan light duty, mesti kemukakan bukti yang dia layak untuk mendapat light duty. Saya sebagai penyelia, saya tak boleh gunakan sebab saya punya common sense, kata ini mengandung layak dapat light duty. Dia mestikan tunjukkan bukti bertulis, bermakna bukti bertulis itu surat light duty daripada pegawai perubatan yang merawat.
>
> (NOE p 55/60)

[48] The plaintiff did not produce a formal certificate but relied on oral medical advice conveyed from the KKIA. The defendants argue this did not meet procedural requirements. Nevertheless, the evidence reveals that the refusal came without exploring accommodation or assistance.

[49] This aligns with the testimony of SP5, Dr Milton Lum, who rejected the notion that written applications were necessary in practice:

> We do not ask the staff member to fill in an application form for light duty ... That is very bureaucratic measure which cannot stand in practice simply because events may move very fast.
>
> (NOE p 41, 46/76)

[50] He added that upon disclosure of pregnancy, the employer bears a positive duty to assess and respond:

> Every pregnant woman has to be assessed on her individual risk. That is a standard practice.
>
> (NOE p 33/76)

[51] The plaintiff's case is further supported by para 16 of the defence pleadings, where the defendants admitted:

> Plaintif Pertama berjumpa dengan Defendan Ke-empat meminta untuk tidak diberikan kerja berat dan Defendan Ke-empat menolak permintaan tersebut.

[52] This admission undermines their later position that the plaintiff failed to apply properly. The rejection was based not on the absence of application but on the refusal to act on an oral request, a refusal that became institutional once light duties were conditioned on written certification without due assistance or facilitation.

[53] The court finds that the plaintiff's oral request, made directly to supervisory staff after medical advice, constituted a sufficient invocation of her need for accommodation under the circumstances. The insistence on written

documentation as a precondition, without providing the means or guidance to obtain it, was unreasonably rigid and inconsistent with the principles of employee safety and proactive duty under s 15 of the OSHA 1994.

[54] Accordingly, the court holds that the plaintiff properly requested lighter duties and that the defendants wrongfully denied or failed to act upon this request. This failure amounts to a breach of duty, particularly in the context of a foreseeable health risk to a pregnant employee working in a high-stress hospital setting.

Whether the defendants' actions or omissions materially contributed to the plaintiff's miscarriage

[55] The court is required to assess whether the acts or omissions of the defendants materially contributed to the miscarriage suffered by the first plaintiff. The standard applicable in such circumstances is not the strict 'but for' test, but rather the test of material contribution to the risk of harm, as articulated in *Wu Siew Ying t/a Fuh Lin Bud-Grafting Centre v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor* [2011] 2 MLJ 1; [2011] 1 CLJ 409. The Federal Court in that case held:

> ... that there were a multiple of factors that could bring about the injury to the plaintiff. Thus, to decide whether there was causation in these circumstances, the approach as to whether any of these acts or events or factors had materially contributed to the plaintiff's injury should be adopted.
>
> In the present case, although the vibration caused by the quarry operations that were carried out by the first defendant was not a primary cause, it had over time materially contributed to the rockfall which caused the plaintiff's injury. As such this factor was neither trivial nor insignificant but instead a cause which materially contributed to the rockfall (see paras 36–38).

[56] Applying this principle, the plaintiff adduced uncontroverted expert evidence from Dr Milton Lum ('SP5'), a consultant Obstetrician and Gynaecologist, who opined that:

> It is possible, it is probable that the work factor may have contributed to her miscarriage.
>
> (NOE p 42/76)
>
> Had an occupational risk assessment of IS and work modification been carried out, her miscarriage may not have been occurred, may not have occurred.
>
> (NOE p 43/76)
>
> ... there was a loss of chance, whether IS mental condition during and post-miscarriage was adequately dealt with. These are addressed at pages 16 to 18 of my opinion.
>
> (NOE p 46/76)

[57] This opinion was reinforced during re-examination, where Dr Lum clarified:

> The questions that were posed to me were prefaced with the need of application. When a pregnant female of staff approaches any of us in a private hospital or a private clinic informing us that she has been advised by a doctor elsewhere whether klinik kesihatan or another general practitioner or another obstetricians that she has to have a light duty, it is incumbent upon the doctor to make a risk assessment. We do not ask the patient to fill in an application form. That is a very bureaucratic measure which cannot stand in practice simply because events may move very fast.
>
> (NOE p 46/75)

[58] The plaintiff had informed her supervisor of her pregnancy on 5 October 2018 and made an oral request for light duties. This triggered a legal and professional obligation to assess occupational risk, which was never fulfilled.

[59] The defendants did not present any contradicting expert medical evidence. Indeed, their own witnesses confirmed they lacked obstetric expertise. SD1 Kamsani bin Kadir admitted the plaintiff was scheduled alone on the relevant date via WhatsApp, and SD2 Ahmad Hailme bin Abdul Halim stated, 'Saya tak masuk hal kamu ... jawab sendiri dengan bos' when the plaintiff reported bleeding. This casual delegation reflects institutional indifference.

[60] Further, SD3 Dr Khairul Baharin, the hospital director, attempted to deny knowledge by stating, 'Bukan direct repot kepada saya' and SD4 Dr Sazali bin Satari, as chair of the internal inquiry, acknowledged that there was no clear hospital policy or risk assessment system in place for pregnant staff.

[61] SP8, Dr Sarah Abdul Mubarak, another gynaecology expert, confirmed that a pregnancy like the plaintiff's, at advanced maternal age and with a high-stress, standing-intensive work environment, should have triggered caution and closer supervision, yet this was entirely absent.

[62] On balance, the court finds that the defendants' omission to perform an occupational risk assessment and their failure to modify the plaintiff's duties materially increased the risk of miscarriage. This lapse is causally linked to the injury and was neither trivial nor unforeseeable.

[63] Accordingly, the court holds that the defendants' conduct materially contributed to the plaintiff's miscarriage and that the legal threshold for causation in tort law has been met. The plaintiff is entitled to succeed on this issue.

Issue: Whether the plaintiff's mental distress was a foreseeable result of the defendants' conduct

[64] The question before the court is whether the plaintiff's psychiatric injury, specifically, moderate depression, was a reasonably foreseeable consequence of the defendants' acts and omissions. In determining this, the court must assess the evidence in light of established principles of remoteness of damage and foreseeability.

[65] It is a foundational principle in tort law that a defendant is liable for all reasonably foreseeable injuries, even if the precise extent of the damage was not. In *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound* [1961] AC 388, Lord Reid held that 'the kind of damage must be reasonably foreseeable although neither the extent of the damage nor the precise manner of its occurrence needs to be'. The plaintiff relies further on *Smith v Leech Brain & Co Ltd and another* [1962] 2 QB 405, where Lord Parker CJ reiterated the 'egg shell skull' rule:

> The question is whether these employers could reasonably foresee the type of injury he suffered, namely, the burn. What, in the particular case, is the amount of damage which he suffers as a result of that burn, depends upon the characteristics and constitution of the victim.

[66] Applying these principles to the present case, the plaintiff has shown through medical evidence that the miscarriage and subsequent mental health deterioration were not only foreseeable but expected risks that medically trained supervisors should have anticipated. Dr Ahmad Syukri Chew, a psychiatrist, confirmed the plaintiff developed 'moderate depression' following the miscarriage and stated that the initial cause for treatment was directly linked to the miscarriage itself, not any prior condition. Dr Ahmad Syukri Chew states in evidence:

> ... sejurus selepas keguguran SP1 memang mengalami moderate depression ... the first cause untuk SP1 menerima rawatan dari Dr Chew ialah sejurus selepas keguguran dan bukan sebelum itu.
>
> (NOE p 48/69)

[67] Further, Dr Milton Lum, the plaintiff's expert in Obstetrics and Gynaecology, provided critical causative evidence. He opined that the miscarriage was foreseeable given the plaintiff's advanced maternal age and the absence of risk assessment after notifying her superiors of the pregnancy. He noted:

> FMY: Your opinion, that the risk of miscarriage was foreseeable yet Dr E and HTI did not act upon IS request for light duty. It is not true, Doctor. It is not because you are mentioning foreseeable for HTI and for Dr Edward.

(NOE p 33/76)

FMY: Question 107, Doctor. She attended psychiatric unit on 14 occasions, Doctor.

SP5: Yes.

(NOE p 44/76)

[68] Notably, the foreseeability of emotional harm was heightened by the defendants' expertise. As medical professionals, they should have appreciated the gravity of denying lighter duties to a pregnant employee and the emotional toll a miscarriage could inflict. This duty is magnified by the fact that Hospital Teluk Intan, the plaintiff's workplace, has its own psychiatric department, suggesting institutional knowledge of such consequences.

[69] The defendant's submissions attempt to downplay this causal link by suggesting other intervening causes, such as the plaintiff's own conduct in driving herself to the clinic. However, as the plaintiff rightly argues, these were not adequately pleaded nor supported by cross-examination or expert rebuttal evidence. Equivalent expert witnesses from the defence side did not challenge Dr Ahmad Syukri Chew's and Dr Lum's conclusions.

[70] In the final analysis, the court finds that the plaintiff's psychological distress, manifested as clinically diagnosed depression, was a foreseeable and direct consequence of the defendants' omission in addressing the plaintiff's request for workplace accommodation. The plaintiff's emotional vulnerability was not a novel or rare occurrence in such circumstances but a likely sequela in a pregnant woman who suffers a miscarriage under preventable work conditions.

[71] Accordingly, this court finds the defendants liable for the plaintiff's mental distress, consistent with the legal principles in *Wagon Mound* and *Smith v Leech Brain & Co Ltd*, reinforced by uncontroverted expert evidence on record.

Whether the first defendant is vicariously liable and the plaintiffs entitled to compensation

[72] In determining whether the first defendant (the Government of Malaysia) is vicariously liable for the acts or omissions of the fourth to sixth defendants and liable in damages to the plaintiff, the court considers the statutory framework, common law principles, and the factual matrix supported by the documentary and oral evidence adduced.

[73] The statutory basis for vicarious liability lies in ss 5 and 6 of the

Government Proceedings Act 1956. Section 5 reads:

> The Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent.

[74] The plaintiff submits that the acts of the individual defendants, including Dr Edward (the head of department) and other supervisory personnel, were committed during the course of their public duties. The plaintiff further argues that their failure to conduct risk assessments, assign light duties, or activate emergency protocols triggered liability in tort. The plaintiff relies on *McGhee v National Coal Board* [1973] 1 WLR 1 and *Fairchild v Glenhaven Funeral Services Ltd and others; Fox v Spousal (Midlands) Ltd; Matthews v Associated Portland Cement Manufacturers (1978) Ltd and others* [2002] UKHL 22 for the principle that a material increase in risk can suffice to prove causation where a precise causal link cannot be established. In *McGhee* Lord Reid opined:

> From a broad and practical viewpoint I can see no substantial difference between saying that what the defendant did materially increased the risk of injury to the pursuer and saying that what the defender did made a material contribution to the injury.

[75] The expert evidence of Dr Milton Lum (SP5) was pivotal. He stated that:

> No occupational risk assessment was carried out when IS informed Dr E of her pregnancy and requested light duty ... The risk of miscarriage was foreseeable yet Dr E and HTI did not act upon [her] request ... Had an occupational risk assessment and work modifications been carried out, her miscarriage may not have occurred.

[76] Furthermore, the internal inquiry chaired by Dr Sazali (SD4) acknowledged systemic failures whereby putting the responsibility solely on managerial discretion without clear guidelines is unfair:

> SD4: The policy of work modification in pregnancy is vague.
>
> (NOE p 41/68)
>
> SD4: Because we don't have Malaysian punya. So, I have to use it lah. Because I think that is the only one that I can find yang objektif. Because kalau tidak budi bicara ketua jabatan. Budi bicara ketua jabatan. So I think it's unfair to the employer juga to make decision without a clear guideline.
>
> (NOE p 52/68)

A [77] This was endorsed by SD5, Dr Mohammad Fahmi bin Zulkifli, who confirmed the report's authenticity. The inquiry's findings clearly show administrative lapses that directly contravened safety duties under the Occupational Safety and Health Act 1994 (OSHA), ss 15 and 16.

B [78] The defendants argue that no causative link was proven between the miscarriage and the failure to assign light duties. However, this argument is unpersuasive in light of the testimonies, especially from SP5 and SP4 (Dr Ahmad Syukri Chew), who confirmed that the plaintiff developed moderate depression post-miscarriage and that her mental health deterioration C was linked to the trauma suffered thereafter.

[79] Moreover, the Government's liability under s 5 is absolute once it is shown that the tortfeasors acted within the scope of public duty. The D defendants did not dispute that the fourth to sixth defendants were acting in their official capacity. The failure to have institutional systems in place, as shown by the testimony of SD1 (Kamsani), SD2 (Ahmad Hailme), and SD3 (Dr Khairul Baharin), reinforces the plaintiff's case that the hospital management failed in their supervisory and procedural responsibilities.

E

[80] Accordingly, the court finds that the acts and omissions of the fourth to sixth defendants, being committed during the discharge of their duties as public officers, give rise to vicarious liability on the part of the first defendant under s 5 of the Government Proceedings Act 1956. The plaintiff has satisfied F the burden of proving causation and injury attributable to the institutional neglect by the officers of Hospital Teluk Intan.

[81] The court thus holds that the first defendant is vicariously liable for the G proven breaches and the plaintiffs are entitled to compensation for the physical, emotional, and consequential losses suffered. The quantum of damages will be assessed accordingly.

CONCLUSION

H

[82] Having considered the totality of the evidence oral and documentary evidence and applying the relevant legal principles, this court finds that the defendants breached their statutory and common law duties of care. Their failure to conduct a risk assessment, accommodate a valid request for light duty, I and provide timely medical support materially contributed to the first plaintiff's miscarriage and mental distress. The first defendant is vicariously liable. Judgment is entered for the plaintiffs, with damages and costs considered here below.

DAMAGES

[83] In the present case, the plaintiffs submitted a detailed claim for damages, which the court considered under several heads, alongside the defendants' positions.

Special damages

[84] Under *special damages* (*ganti rugi khas*), the plaintiffs sought a total of *RM5,273.20*, which included items such as RM3,000 for the Roswell confinement package, medical treatment expenses at Anson Bay Medical Centre (RM153 and RM188.60), Hospital Umra (RM110), Klinik Jyothi (RM60 and RM50), Klinik Medivron (RM30), and Poliklinik Dr Azhar (RM20 and RM50). They also claimed RM1,111.60 for travel expenses and RM500 for the husband's caregiving support. The defendants did not challenge this head with specificity, and the court allowed the full amount of *RM5,273.20*, as they reasonable.

General damages — Pain, suffering, and emotional distress

[85] The plaintiffs collectively claimed RM250,000 in general damages, divided as follows: RM100,000 for the miscarriage, RM75,000 for the first plaintiff's mental health impairment, and RM75,000 for the emotional suffering of the second plaintiff. The defendants countered this by proposing a substantially lower sum of RM15,000, with RM5,000 allocated to the miscarriage and RM10,000 for mental distress, citing the speculative nature of the causal link.

[86] Upon review of the pleadings, evidence, and relevant authorities, the court finds that the first plaintiff suffered a miscarriage while under work-related stress and did not receive the protective measures required under workplace health policies. The plaintiff was diagnosed with moderate depression following the incident and received psychiatric treatment. Although the plaintiff also attributes a reduction in her ability to conceive to the incident, no definitive medical causation was established on this point. However, her expert's view (Dr Milton Lum) was not contradicted.

[87] The defendants argued that the miscarriage could have resulted from natural factors, including SP1's age and preexisting fibroid condition. However, the court notes that once the defendants were informed of the plaintiff's pregnancy on 5 October 2018, there was a duty to take proactive steps consistent with the Guideline on Reproductive Health Policy and Programme at the Workplace. Their failure to do so materially increased the risk of harm.

[88] Taking into account the totality of the evidence and authorities cited, and applying the principles from *Smith v Leech Brain & Co Ltd* and *Wu Siew Ying v Gunung Tunggal Quarry & Construction Sdn Bhd & Anor*, the court finds that the plaintiff is entitled to general damages on the basis that plaintiff's work conditions materially increased the risk of miscarriage, but a reduction from the sum claimed is warranted due to the lack of conclusive causation.

[89] Accordingly, a total sum of *RM80,000* is awarded under general damages. The amount is apportioned as follows:

(a) *RM40,000* for pain and suffering from the miscarriage, reflecting the physical loss, disruption to reproductive expectations, and associated grief;

(b) *RM30,000* for the first plaintiff's psychological trauma and psychiatric treatment, supported by expert and factual evidence; and

(c) *RM10,000* to the second plaintiff ('SP6') for emotional suffering, strain on marital expectations, and the psychological impact of the miscarriage.

[90] This apportionment reflects a reasoned balance between the evidence adduced, the competing positions of the parties, and prevailing case law on damages for emotional and reproductive harm.

Aggravated damages — Indifferent conduct and emotional harm

[91] The plaintiffs claimed RM125,000 in aggravated damages, alleging that the defendants' conduct after the miscarriage was indifferent and contributed to further emotional distress. They pointed to dismissive communications — particularly WhatsApp replies from the fifth defendant, such as 'cuti jangan minta dengan saya ...' as evidence of a lack of empathy. The plaintiffs relied on *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784; [2018] 4 AMR 745; [2017] CLJU 500 and *Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal* [2018] 3 MLJ 281; [2018] 1 AMR 209; [2018] 3 CLJ 427 to support the threshold for aggravated damages, arguing that the defendants' failure to act sensitively or implement safety measures constituted oppressive behaviour.

[92] The defendants denied wrongdoing, asserting they referred the plaintiff for appropriate medical attention and that the messages cited were taken out of context. They contended there was no intent to cause harm and that any administrative failings did not amount to aggravated misconduct. They further argued that aggravated damages were unwarranted without malice or recklessness.

[93] Upon review, the court found no clear evidence of deliberate cruelty or oppressive behaviour that would justify a high aggravated award. However, it accepted that the defendants, as healthcare professionals, failed to provide the necessary emotional support and institutional responsiveness expected in the aftermath of a miscarriage. While the conduct did not meet the legal threshold for malice, the court recognised that the insensitive handling of the situation warranted some remedy.

[94] Accordingly, the court awarded *RM20,000 in aggravated damages*, reflecting a proportionate response to the defendants' insufficient care and sensitivity during a medically and emotionally vulnerable period for the plaintiff.

Future damages (IVF costs)

[95] The plaintiff claimed RM70,000 for future IVF treatment, relying on expert SP8's opinion that her chances of natural conception were very low and that IVF was medically necessary. Past authorities such as *Nares a/l Sundaram & Anor v Goh May Fat & Anor* (Appeal No B-04–300–09) of 2014 (unreported) were cited to support such awards, even in cases with limited success rates. The defendants, however, contended that the plaintiff's infertility stemmed from a pre-existing fibroid condition rather than any workplace-related negligence. They argued that only one-third of the amount should be awarded, referencing *Ogedegbe Imoukhuede Rawlings v Lingeswaran a/l Muniandy* [2016] 10 MLJ 222; [2016] CLJU 292 to support cautious awards in fertility-related claims.

[96] The court accepts that the first plaintiff's loss of reproductive opportunity was a genuine consequence and that IVF presents a reasonable remedial option. However, in light of competing medical factors and the partial causative link, the court awards *RM50,000* under this head. Any additional costs beyond this amount shall be the first plaintiff's responsibility, as part of her personal decision to pursue further fertility treatment, consistent with the cautious approach to such awards outlined in *Ogedegbe*.

LEGAL COSTS AND INCIDENTAL EXPENSES

[97] The plaintiffs claimed a total of RM192,216, comprising RM150,000 in legal fees and RM42,216 in incidental litigation expenses, which included expert costs, transcript fees, travel, and witness allowances. They justified the amount on the basis of the complex medico-legal nature of the case, the need to engage medical experts, and the number of hearing days involved. The

plaintiffs also highlighted the absence of conditional fee structures or litigation insurance in Malaysia, arguing that these costs were reasonably and necessarily incurred.

[98] The defendants, however, contended that the total claim was excessive and disproportionate, noting that this was not a classical medical negligence case and proposing a RM10,000 cap for all legal and incidental costs.

[99] Upon careful consideration, the court finds merit in both the nature of the issues raised and the need for expert involvement. However, to maintain proportionality, the court awards a *global sum of RM40,000*, including legal costs and disbursements.

JUDGMENT INTEREST

[100] The court awards interest at *5%pa* on the judgment sum, in accordance with Practice Direction No 1 of 2012 and r 60 of the Rules of Court 2012. Interest shall run as follows:

(a) on general damages, from the date of service of the writ to the date of judgment;

(b) on special damages, from the date of the incident to judgment; and

(c) on the total sum, from judgment until full satisfaction.

Plaintiff's claim allowed.

Reported by K Selvaraju